

### C. Remarks

The claims are claim 1-12 and 14, with claim 1 being in independent form. Claims 15-17 have been cancelled, without prejudice or disclaimer of the subject matter presented therein. Claims 1-4 and 9 have been amended to define Applicants' invention more clearly and to correct certain typographic errors. In particular, claim 1 has been amended to clarify that the combination of the base liquid and the dry component forms the edible layered component on the outside surface of the edible core. Claim 1 has also been amended to clarify that the edible layered component is an intermediate product component in the coating process, whereas the outer dough layer is the final result of a set of layering and drying steps, and that the shelf stable edible snack may be cooked after the outer dough layer is applied. Support for these amendments may be found, *inter alia*, in paragraphs [0007], [0011], [0017] and [0025] of the specification. No new matter has been added. Reconsideration of the claims is expressly requested.

Claims 1-12 and 14 stand rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement. In particular, the Examiner has alleged that the phrase "about 10 wt.% to about 30 wt.% glycerin" in claim 1 does not have support in the specification, which discloses 10-30%. While Applicants disagree with the Examiner, to expedite prosecution, claim 1 has been amended to delete the term "about" from the objected to phrase. Accordingly, withdrawal of the written description rejection is respectfully requested.

Claim 6 stands rejected under 35 U.S.C. §112, first paragraph, for allegedly lacking enablement. Specifically, the Examiner has alleged that the specification while enabling "dough layer" as a dry component, does not "teach how to make dry component that is fat based,

dairy based, protein based, grain based or mixtures thereof” (emphasis added). The Examiner further asserts that one skilled in the art would not know what ingredients to use and how much to use. Applicants respectfully traverse this rejection.

First, it appears that the Examiner is confusing the “dry component” with the “dough layer”. The dry component is not the dough layer, but one of several components “used to form the outer dough layer”. See paragraph [0037] of the specification. Indeed, the specification “does not teach how to make dry component” as stated by the Examiner on page 2 of the Office Action because the dry component is not made; it is provided as an ingredient for the dough layer. Second, as stated in MPEP §2164.02, “[c]ompliance with the enablement requirement . . . does not turn on whether an example is disclosed.” Nevertheless, the present specification provides one or more examples of dry components that fall under the categories the Examiner asserts are not taught. See paragraphs [0037]-[0039] of the specification. For instance, exemplary dairy-based dry components disclosed include milk powder or cheese powder (paragraph [0038]); exemplary protein-based dry components disclosed include proteins (paragraph [0038]) such as nut meats (paragraph [0037]); and exemplary grain-based dry components disclosed include starches (paragraph [0038]) such as cereal grains (paragraph [0039]).

With regard to the amounts of these dry components, one skilled in the art would understand how much of the dry components need to be used based on the illustrated Examples. Further, in order to make an enablement rejection, the initial burden is on the Examiner to give reasons for lack of enablement. However, the Examiner has not provided “adequate reasons . . . to establish that a person skilled in the art could not use the genus as a whole without undue experimentation.” MPEP §2164.02. Thus, Applicants respectfully submit that based on the

disclosure in the specification and knowledge in the art, a skilled artisan would be able to understand the meaning of “fat based, dairy based, protein based, grain based or mixtures thereof” and practice the claimed invention. Accordingly, withdrawal of the enablement rejection is respectfully requested.

Claims 1, 6 and 15 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. In particular, the Examiner has alleged that the processing steps of claim 1 are unclear. The Examiner has maintained the rejection of claim 6, alleging that it is vague and indefinite as it is broader in scope than claim 1, from which it depends. The Examiner also alleges that claim 15 is vague and indefinite as it is not clear if the edible snack of claim 15 is the same as the edible snack of claim 1. Applicants respectfully traverse the rejections.

The indefiniteness rejection with respect to claim 15 is rendered moot due the cancellation of the claim 15. Claim 1 has been amended for clarification to address the issues raised by the Examiner. According to claim 1, as currently amended, an outer dough layer is created on the outside surface of the edible core by layering liquid and dry components on the edible core and, optionally, drying after one or both of the layering steps. However, since dependent claims 3 and 4 recite that the layering and drying steps may be repeated, Applicants have given the intermediate product components specific names at each step of the process to provide clarity to the claims. Hence, in claim 1, an edible core that has been coated with the base liquid is called the liquid coated core. After the dry component has been applied to the liquid coated core, the combination of the base liquid and the dry component forms an edible layered component on the outside surface of the edible core. At this point, or after the optional drying step(s), the outer dough layer is formed from the edible layered component. That is, by following the steps of the process, the combination of liquid and dry components is transformed

into an outer dough layer on the surface of the edible core. When the layering and drying steps are repeated according to claims 3 and 4, it follows that the resulting intermediate edible layered component is transformed into an outer dough layer at the completion of the second set of steps. In this way, the thickness of the dough layer on the edible core may be built up. Finally, the cooking of the outer dough layer on the outside surface of the edible core yields the shelf stable edible snack. The outer dough layer of the shelf stable edible snack, by its composition and organoleptic properties (e.g., flavor, texture), is designed to be a cracker, bread, cookie, muffin, etc., and has a water activity of about 0.2 to about 0.8 at 25 °C.

With respect to the Examiner's rejection of claim 6, the current amendment to claim 1 also further clarifies the difference between the dry component and the outer dough layer. As explained above in response to the enablement rejection, the dry component is not the dough layer, but one of several components used to form the outer dough layer. In addition, as stated in the prior Office Action response, the term "based" in each of the claim 6 terms would be understood by one skilled in the art to mean that a majority of the dry component composition (> 50 wt.%) belongs to the indicated food ingredient category, namely, fat, dough, dairy, protein, grain, or mixtures thereof. Hence, its definition in the specification is not necessary. Further, various examples of these categories are also provided in the specification as discussed above. Thus, in view of the disclosure in the specification, a person skilled in the art should readily understand the meaning of the phrase in question. Accordingly, withdrawal of the indefiniteness rejection is respectfully requested.

Claims 15 and 16 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,433,961 (Lanner). Claims 15 and 16 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,663,175 (Werner). Claim 17

stands rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lanner. These rejections are rendered moot due to the cancellation of claims 15-17.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and allowance of the claims in the present application. Should the Examiner believe that issues remain outstanding, the Examiner is respectfully requested to contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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